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FEDERAL COMMUNICATIONS COMMISSION  
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November 10, 1993

Mr. William F. Caton  
Acting Secretary,  
Federal Communications Commission  
1919 M Street, N.W.  
Room 222  
Washington, D.C. 20554

Re: Competitive Bidding  
PP Docket No. 93-253

Dear Mr. Caton:

Submitted herewith on behalf of Roamer One, Inc. is an original and four (4) copies of its Comments with respect to the above docket.

Kindly contact this office directly with any questions or comments concerning this submission.

Respectfully submitted,

*William J. Franklin*

William J. Franklin  
Attorney for Roamer One, Inc.

Encs.  
cc: Roamer One, Inc.

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Before the  
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In the Matter of )  
 )  
Implementation of Section 309(j) )  
of the Communications Act )  
 )  
Competitive Bidding )

PP Docket No. 93-253

To: The Commission

**COMMENTS OF ROAMER ONE, INC.**

Roamer One, Inc. ("Roamer One"), by its attorney and pursuant to Section 1.415 of the Commission's Rules, hereby files comments with respect to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1/</sup> Roamer One's comments are focused on the Commission's proposal for the licensing of mutually exclusive 220 MHz licenses, and issues ancillary thereto. As to 220 MHz licensees, Roamer One urges the Commission to recognize the specific technical, economic, and regulatory constraints of this developing service, and retain random selection as the method for allocating 220 MHz licenses.<sup>2/</sup>

**DESCRIPTION OF ROAMER ONE**

Roamer One is a communications construction and management firm which specializes in the funding, construction, management, and operation of 220 MHz systems. The principals of Roamer One

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<sup>1/</sup> 8 FCC Rcd \_\_\_\_ (FCC 93-455, released October 12, 1993) ("NPRM").

<sup>2/</sup> Although these Comments are focused on 220 MHz licensing, Roamer One's silence on other issues raised in the NPRM should not be taken to indicate any specific position thereon.

now hold more than 240 authorizations for 220 MHz commercial, 5-channel systems in 95 markets nationwide. Pursuant to various management agreements, Roamer One also has the responsibility to construct, manage, and operate approximately 300 additional 220 MHz systems in about 60 markets under the ultimate direction and control of their respective licensees.

In support of these efforts, Roamer One now has contracts with Uniden, Inc. to purchase 220 MHz 5-channel base stations for these systems. Roamer One has also begun the installation of these systems, and within this month (i.e., November 1993) will begin operating (pursuant to a management agreement) its first system near Columbus, Ohio. This system will also be Uniden's first operating 220 MHz system.

With this extensive practical experience and knowledge of the 220 MHz SMR industry, Roamer One has a unique perspective from which to comment on the Commission's proposed regulatory treatment of 220 MHz licensees.

#### **COMMENTS**

**I. BECAUSE OF THEIR AS-YET-UNDEVELOPED NATURE AND TECHNICAL LIMITATIONS, THE 220 MHz SERVICES NEED A SENSITIVE REGULATORY TREATMENT WHICH RECOGNIZES THEIR SPECIAL NATURE.**

As a gross generality, many discussions lump the 220 MHz licensees in with existing 800 MHz and 900 MHz SMR licensees, as merely the same service operating at a different frequency band. Like many generalities, this classification is simplistic and ignores important differences between services in the bands. As we will see, the 220 MHz communications services have unique

regulatory requirements which must be addressed in this proceeding.

Unlike the 800 MHz and 900 MHz services, the 220 MHz services is an infant service, only now emerging from its regulatory incubation.<sup>3/</sup> At present the Commission has a freeze on additional 220 MHz applications, thus preventing the relocation or expansion of authorized 220 MHz systems or the development of additional systems in unlicensed areas.

For these reasons, at most only a handful of 220 MHz licensees are now operational. No community of demand for 220 MHz radio services is commonly recognized. Indeed, the Commission recognized "the uncertainty with respect to how 220 MHz Local licensees will actually conduct their businesses...."<sup>4/</sup>

Unlike the 800 MHz and 900 MHz services, the 220 MHz services face substantial technical limitations. The 220 MHz allocation is extremely narrow-band (5 KHz channelization), as compared with 25 KHz channels at 800 MHz and 12.5 KHz channels at 900 MHz. This narrow 220 MHz channelization renders its equipment difficult to develop and expensive to manufacture. Both base-station and user equipment to operate at 220 MHz is only now

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<sup>3/</sup> The Commission held its lottery for 5-channel 220 MHz Commercial Nationwide systems on March 31, 1993, but has not yet issued licenses to the lottery winners. The Commission held its lottery for 5-channel 220 MHz Local systems on October 19, 1992, and is now issuing those licenses. The Commission has not yet designated tentative selectees or issued licenses for the 10-channel 220 MHz Nationwide Commercial systems or for the 220 MHz Noncommercial Nationwide systems.

<sup>4/</sup> NPRM, supra, ¶133 n.123.

being type-accepted, and that equipment is not in wide-spread distribution or achieving economies of scale in its manufacture.

Although all three bands are licensed with paired channels, at present the spacing between the paired 220 MHz channels forces voice operations to operate on the CB-style, simplex "push-to-talk" mode of operation. Thus, in the foreseeable future 220 MHz systems are likely to be unattractive for interconnected, two-way voice communications, and not viable competitors for 800 MHz or 900 MHz SMR mobile-telephone services, 800 MHz ESMR services, cellular, or anticipated PCS services.

These differences (which substantially result from the Commission's 220 MHz regulations) render 220 MHz authorizations substantially different from the existing 800 MHz and 900 MHz authorizations. Accordingly, in this proceeding the Commission must recognize those differences in carefully crafting a regulatory treatment appropriate for the specific nature of the 220 MHz radio services.

**II. THE COMMISSION SHOULD RETAIN RANDOM SELECTION AS THE METHOD FOR GRANTING INITIAL LICENSES FOR ALL NEW 220 MHz SYSTEMS.**

Paragraphs 131-135 of the NPRM request comment on the preferred method of granting initial 220 MHz licenses. As a threshold matter, Roamer One recognizes that the Commission has correctly divided the 220 MHz licenses into four classes (Commercial Nationwide, Noncommercial Nationwide, Local, and Local-Public

Safety) for the analytical purposes while implementing Section 309(j) of the Communications Act.<sup>5/</sup>

220 MHz Local. The Commission correctly recognized (NPRM, ¶132 n.122) that substantial uncertainty exists as to the likely future use of 220 MHz Local channels. Thus, the Commission correctly declined to propose "to use competitive bidding immediately to award these [220 MHz Local] licenses." Id. The Commission should follow through on this thought, and affirmatively state that, at least throughout the development phase of 220 MHz service, Local channels will be awarded by random selection.

At present, the D.C. Circuit is considering the validity of the Commission's procedures under which it accepted 220 MHz Local applications. If this matter is decided adversely to the Commission,<sup>6/</sup> it could well be required to accept further 220 MHz Local applications and perhaps even hold a new lottery involving the more than 60,000 previously filed 220 Mhz Local applications as well as an undetermined number of additional applications.

Under the Commission's licensing scheme for 220 MHz Local channels, all concurrently filed pending applications are deemed

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<sup>5/</sup> The Commission proposed (NPRM, ¶¶ 133 n.124, 134) to exempt Local-Public Safety and Noncommercial Nationwide 220 Mhz licensees from competitive bidding. This result appears to be a statutory mandate, and will not be discussed further herein.

<sup>6/</sup> This illustration is given only on a contingent basis. Roamer One does not feel that the Commission erred in its 220 MHz licensing, or that any massive relicensing is required.

to be interdependent, and subject to a single massive lottery.<sup>2/</sup> Under this scheme, competitive bidding for Local 220 Mhz licenses would be an administrative impossibility. Every applicant would be bidding against every other applicant, and no bidder -- or even the Commission staff -- would have any efficient method to determine who the winning bidders were. Bidders would be unable to know whether to tender their up-front payment, if required by the final competitive bidding rules. Thus, the magnitude of relicensing the 220 MHz Local licenses requires that any relicensing be done by auction under now-proven procedures.

For the reasons discussed above, it is uncertain whether or how many 220 MHz Local licenses will be built. Any investor building and operating a 220 MHz Local system is taking a substantial economic risk. Unlike cellular, PCS, or even 800 MHz SMR service, no one knows with any degree of certainty who will be the users of a 220 MHz Local system, or what the costs and revenues (if any) of that system might be. Adding the cost of license acquisition to this risk could mean that the 220 MHz spectrum would lie substantially fallow, a result which would not serve the public interest.<sup>3/</sup>

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<sup>2/</sup> For example, the grant of one 220 MHz license in Detroit could render the same channel ungrantable in Toledo, which could in turn make it grantable again in Cleveland, ungrantable in Pittsburgh, grantable in Harrisburg, ungrantable in Philadelphia, with further licensing effects cascading up and down the eastern seaboard.

<sup>3/</sup> Indeed, the 220 MHz Local licenses present such uncertainty at the present time that they would not be likely to produce enough revenue to pay the Commission's expenses of 220 MHz auction administration.

Accordingly, licensing the 220 MHz Local channels by competitive bidding would not satisfy the statutory objectives set forth in Section 309(j)(3) of the Communications Act.

220 MHz Nationwide Commercial. As the Commission notes (NPRM, ¶135), it could also be required to reselect tentative selectees for the 220 MHz Nationwide Commercial licenses. For many of the reasons applicable to 220 MHz Local channels, that licensing should also be done by random selection.<sup>2/</sup>

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<sup>2/</sup> The Commission should note that Section 6002(d)(3)(E)(2) of the Omnibus Budget Reconciliation Act of 1993 gives the Commission continuing authority to use random selection for 220 MHz Nationwide Commercial licenses, in that the initial applications for that service were accepted for filing prior to July 26, 1993. The Commission (NPRM, ¶143 & n.149) incorrectly reads the legislative history of this provision by stating that the provision is intended only for IVDS licensing. While IVDS licensing is mentioned as an example of a pre-July 26 application in the Conference report, neither the statute nor the legislative history limits that provision to IVDS.



**CONCLUSION**

Accordingly, Roamer One, Inc. respectfully requests the Commission to retain its present system of granting initial 220 MHz licenses by random selection.

Respectfully Submitted,

**ROAMER ONE, INC.**

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Its Attorney

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